



PHOTOGRAPH BY FAYE ELLMAN

The subway entrance at 52nd Street and 8th Avenue that is the subject of the lawsuit was closed in November because of the large number of crimes committed there, according to Transit Authority officials.

TA Held Potentially Liable Despite Gov't Immunity

BY EDWARD A. ADAMS

A WOMAN WHO WAS STABBED 21 times after descending into a closed subway entrance can sue the Transit Authority because the sign above the entrance said it was open, a Manhattan State Supreme Court justice has ruled. The decision will be published tomorrow.

Justice Martin Schoenfeld found that correctly marking entrances is part of the TA's duty of care as proprietor of the subways, for which it can be sued, rather than its duty of care stemming from its actions as a government entity, for which it is generally immune from suit. *Belle v. New York City Transit*

NEWYORK LAW JOURNAL MONDAY, FEBRUARY 22, 1993

TA Held Potentially Liable in Subway Stabbing

Continued from page 1, column 6

Authority, Part 23, which dismissed the TA's motion for summary judgment, was issued late last week.

Linda Belle experienced "a prototypical New York nightmare," according to the judge. On Jan. 5, 1991, 45 minutes after noon, she entered the IND line on the southwest corner of Eighth Avenue and 52nd Street.

A sign above the stairway said "Entrance Open Daily 4 AM-10:25 PM. Token required or use entrance at 50 St." In addition, the metal gate at the base of the stairs was unlocked and open.

But the token receptacle on the sole turnstile was locked. As she turned to leave, Ms. Belle was trapped between two unidentified men. The one behind her grabbed her around the neck, demanded her purse, and stabbed her face, neck, arms and hands.

"Unable to scream because of the stab wounds in her throat, [Ms. Belle] crawled up the stairway," where she was helped by passers-by, according

to the court. She has lost some movement in her face, neck and upper body, and lost some vision and hearing.

The entrance was closed in November because of the large number of crimes committed there, according to TA spokesperson Charles Seaton.

Broader Duty

Justice Schoenfeld contrasted this case with a 1982 suit, in which another defendant was assaulted as she descended a staircase to the subway platform. In that case, a sign above the entrance used indicated no token booth clerk was on duty. The defendant claimed the MTA, the TA's parent company, failed to sufficiently protect her, but the court found the MTA had no "special duty" as an arm of the government to offer such protection. *Weiner v. Metropolitan Transportation Authority*, 55 NY2d 175.

By contrast, in this case the defendant was not claiming that the TA

breached some duty arising out of its role as a governmental entity, such as the provision of police protection, but rather she claims it failed to adequately maintain the sign above the entrance, Justice Schoenfeld noted.

In addition, the court widened the TA's duty in another way. A 1990 Manhattan Supreme Court decision had found that a woman assaulted while trapped between two one-way gates could sue the TA (*Popplestone v. New York City Transit Authority*, NYLJ, March 6, 1990). Justice Schoenfeld found that Ms. Belle "was cornered below the ground by two males with a deadly weapon, a felonious intent and a vicious propensity. In a very real sense, she was just as trapped" as if the TA's own equipment had prevented her escape.

Ms. Belle was represented by Steven Aripotch and Laura Gentile of O'Dwyer & Bernstien. The TA was represented by its in-house counsel, Wallace D. Gossett and Jamileh-Sofia diGuida.